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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

REYNOLDS FAMILY REVOCABLE TRUST
U/A DATED 04/08/2015, Derivatively on Behalf
of THE CHARLES SCHWAB CORPORATION,

Plaintiff,

v.

CHARLES R. SCHWAB; WALTER W.
BETTINGER II; PETER CRAWFORD; JOSEPH
R. MARTINETTO; JOHN K. ADAMS, JR.;
CHRISTOPHER V. DODDS; STEPHEN A.
ELLIS; MARK A. GOLDFARB; FRANK C.
HERRINGER; ARUN SARIN; PAULA A.
SNEED; CHARLES A. RUFFEL; JOHN T.
DEA; C. PRESTON BUTCHER; STEPHEN T.
MCLIN; ROGER O. WALTHER; ROBERT N.
WILSON; WILLIAMS S. HARAF; and DOES 1-
25, Inclusive,

Defendants,

and

THE CHARLES SCHWAB CORPORATION, a
Delaware Corporation

Nominal Defendant.

CASE NO. 3:23-cv-02938

**DEFENDANTS' NOTICE OF REMOVAL OF
ACTION**

(San Francisco Superior Court Case No.
CGC-23-607047)

Action Filed: June 12, 2023
Trial Date: None Set

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND TO PLAINTIFF REYNOLDS FAMILY REVOCABLE TRUST U/A DATED 04/08/2015 AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332 and 1441, Defendants The Charles Schwab Corporation; Charles R. Schwab; Walter W. Bettinger II; Peter Crawford; Joseph R. Martinetto; John K. Adams, Jr.; Christopher V. Dodds; Stephen A. Ellis; Mark A. Goldfarb; Frank C. Herringer; Arun Sarin; Paula A. Sneed; Charles A. Ruffel; and Joan T. Dea¹ (“Defendants”) hereby remove to the United States District Court for the Northern District of California the above-captioned state court action, originally filed as Case No. CGC-23-607047 in San Francisco County Superior Court, State of California. Removal is proper on the following grounds:

I. TIMELINESS OF REMOVAL

1. Plaintiff Reynolds Family Revocable Trust U/A Dated 04/08/2015 (“Plaintiff”) filed its Complaint against Defendants in San Francisco County Superior Court, State of California, Case No. CGC-23-607047, on June 12, 2023. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the (a) Summons, (b) Complaint, (c) Civil Case Cover Sheet, (d) Docket are attached as Exhibits A–D to the Declaration of Jason J. Mendro (“Mendro Decl.”), filed concurrently with this notice.

2. The Summons was issued on June 14, 2023, but service has not been completed. Mendro Decl. ¶ 6. This notice of removal is timely because it is filed before service has been completed, so necessarily within the 30 days of service prescribed by 28 U.S.C. § 1446(b).

II. SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL

3. Plaintiff brings this lawsuit derivatively on behalf of Nominal Defendant The Charles Schwab Corporation (“Schwab”) against certain of Schwab’s current and former directors and officers. On information and belief, Plaintiff’s trustees are Douglas and Sheri Reynolds (the “Trustees”), who both reside in Kaliua Kona, Hawaii. Haky Decl. ¶¶ 2-3.

4. Nominal Defendant Schwab is incorporated in Delaware and has its principal place of business in Westlake, Texas. Haky Decl. ¶ 4.

¹ Erroneously sued as John T. Dea.

5. Defendant Charles R. Schwab resides in Florida. Haky Decl. ¶ 5.a.
6. Defendant Walter W. Bettinger II resides Ohio. Haky Decl. ¶ 5.b.
7. Defendant Peter Crawford resides in the California. Haky Decl. ¶ 5.c.
8. Defendant Joseph R. Martinetto resides in Arizona. Haky Decl. ¶ 5.d.
9. Defendant John K. Adams, Jr., resides in Connecticut. Haky Decl. ¶ 5.e.
10. Defendant Christopher V. Dodds resides in California. Haky Decl. ¶ 5.f.
11. Defendant Stephen A. Ellis resides in California. Haky Decl. ¶ 5.g.
12. Defendant Mark A. Goldfarb resides in Ohio. Haky Decl. ¶ 5.h.
13. Defendant Frank C. Herringer resides in California. Haky Decl. ¶ 5.i.
14. Defendant Arun Sarin resides in Florida. Haky Decl. ¶ 5.j.
15. Defendant Paula A. Sneed resides in Nevada. Haky Decl. ¶ 5.k.
16. Defendant Charles A. Ruffel resides in Connecticut. Haky Decl. ¶ 5.l.
17. Defendant Joan T. Dea resides in California. Haky Decl. ¶ 5.m.
18. Defendant C. Preston Butcher resides in California. Haky Decl. ¶ 5.n.
19. Defendant Stephen T. McLin resides in California. Haky Decl. ¶ 5.o.
20. Defendant Roger O. Walther resides in California. Haky Decl. ¶ 5.p.
21. Defendant Robert N. Wilson resides in Pennsylvania. Haky Decl. ¶ 5.q.
22. Defendant Williams S. Haraf resides in Florida. Haky Decl. ¶ 5.r.
23. Plaintiff alleges three causes of action against Defendants: (1) Breach of Fiduciary Duty; (2) Waste of Corporate Assets; and (3) Unjust Enrichment. Mendro Decl., Ex. B (“Compl.”) ¶¶ 147-163. Among other things, Plaintiff contends that Defendants are liable for actual and compensatory damages in excess of \$187 million. Compl. ¶¶ 99-101 & Prayer for Relief.
24. Removal is proper pursuant to 28 U.S.C. § 1332 because there is complete diversity between Plaintiff and Defendants and the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1332. Defendants deny Plaintiff’s factual allegations and deny that it is entitled to the relief requested. However, based on the allegations in the Complaint and the Prayer for Relief, all requirements for federal jurisdiction under Section 1332 have been met, and this Court accordingly has original jurisdiction over this action.

A. There Is Complete Diversity of Citizenship.

25. Plaintiff and Defendants are “citizens of different states.” 28 U.S.C. § 1332(a).

26. Plaintiff is a citizen of Hawaii. The citizenship of a non-business trust for purposes of diversity jurisdiction is “the citizenship of its trustee or trustees.” *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (citing *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 464 (1980)). In turn, a person is deemed a citizen of the state in which he or she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A party’s residence is prima facie evidence of his or her domicile. *Ayala v. Cox Auto., Inc.*, 2016 WL 6561284, at *4 (C.D. Cal. Nov. 4, 2016) (citing *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994)). A party is domiciled where she “resides with the intention to remain or to which she intends to return.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). Plaintiff’s Trustees are residents of Hawaii, Haky Decl. ¶¶ 2-3, and are therefore deemed citizens of Hawaii for purpose of diversity jurisdiction, *Ayala*, 2016 WL 6561284, at *4. Plaintiff therefore is also deemed a citizen of Hawaii. *Johnson*, 437 F.3d at 899.

27. Nominal Defendant Schwab is a citizen of Delaware and Texas. “[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1); *see also Harris v. Rand*, 682 F.3d 846, 851 (9th Cir. 2012) (“[A] corporation’s principal place of business ‘refer[s] to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities.’” (quoting *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010))). Because Schwab is incorporated in Delaware and has its principal place of business in Westlake, Texas, Haky Decl. ¶ 4, it is therefore deemed a resident of those states.

28. The remaining Defendants are citizens of Arizona, California, Connecticut, Florida, Nevada, Ohio, and Pennsylvania based on their places of residence. *See* Haky Decl. ¶¶ 5.a-5.r; *Ayala*, 2016 WL 6561284, at *4.

29. Accordingly, at the time the Complaint was filed and at the time of removal, there was and is complete diversity of citizenship between Plaintiff and Defendants. *See* 28 U.S.C. § 1332(a).

30. Although Defendants Crawford, Dodds, Ellis, Herringer, Dea, Butcher, McLin, and Walther are citizens of California, 28 U.S.C. § 1441(b)(2) does not prevent removal because those Defendants have not been “properly joined and served.” *See, e.g., Fobb v. Uber Techs., Inc.*, 2022 WL 620336, at *2 (N.D. Cal. Mar. 3, 2022) (“[A] plain reading of 28 U.S.C. § 1441(b)(2) allows pre-service removal by a forum defendant.”); *Monet v. Tesla, Inc.*, 2022 WL 2714969, at *2 (N.D. Cal. July 13, 2022) (“[T]he plain language of § 1441(b)(2) bars removal only when a defendant ‘properly joined *and served*’ is a resident of the forum.” (citation omitted) (emphasis in original)); *Loewen v. McDonnell*, 2019 WL 2364413, at *7 (N.D. Cal. June 5, 2019) (“[T]he Northern District of California has consistently held a defendant may remove an action prior to receiving proper service, even when the defendant resides in the state in which the plaintiff filed the state claim.”).

B. The Amount in Controversy Exceeds \$75,000.

31. In assessing whether the amount in controversy requirement has been satisfied, “a court must ‘assume that the allegations of the complaint are true and that a jury will return a verdict for the plaintiff on all claims made in the complaint.’” *Campbell v. Vitran Exp., Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012) (quoting *Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)). In other words, the focus of the Court’s inquiry must be on “what amount is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. Feb. 27, 2008) (quoting *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005)).

32. The amount in controversy in this action exceeds the sum of \$75,000, exclusive of interest and costs, because Plaintiff seeks, among other relief, damages in excess of \$187 million. Compl. ¶¶ 99-101 & Prayer for Relief. Specifically, Plaintiff seeks compensatory damages for “the amount of damages sustained by the Company as a result of the defendants’ breaches of fiduciary duties, waste of corporate assets, and unjust enrichment,” which Plaintiff elsewhere alleges include \$52 million paid in disgorgement and \$135 million paid in civil penalties as a result of a settlement with the Securities and Exchange Commission. *Id.*

33. Defendants deny that liability or damages can be established as to Plaintiff. Defendants do not concede and reserve the right to contest, at the appropriate time, that any of Plaintiff’s allegations

1 constitute a cause of action against them under applicable law. No statement or reference contained
 2 herein shall constitute an admission of liability or a suggestion that Plaintiff will or could actually
 3 recover any damages based upon the allegations contained in the Complaint or otherwise. Defendants’
 4 Notice seeks only to establish that the amount in controversy is more likely than not in excess of Section
 5 28 U.S.C. § 1332(a)’s jurisdictional minimum. “The amount in controversy is simply an estimate of
 6 the total amount in dispute, not a prospective assessment of [Defendants’] liability.” *Lewis v. Verizon*
 7 *Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).

8 **III. JURISDICTION & PROPRIETY OF REMOVAL**

9 34. Based on the foregoing facts and allegations, this Court has original jurisdiction over
 10 this action pursuant to 28 U.S.C. § 1332(a) because:

- 11 a) This is a civil action within the meaning of Section 1332(a);
- 12 b) The properly named parties are citizens of different states, as required by Section
 13 1332(a)(1); and
- 14 c) The amount in controversy exceeds \$75,000, as required by Section 1332(a).

15 Accordingly, this action is properly removable under 28 U.S.C. § 1441.

16 35. The United States District Court for Northern District of California is the federal judicial
 17 district embracing the place where the San Francisco County Superior Court sits. This action was
 18 originally filed in the San Francisco County Superior Court, rendering venue in this federal judicial
 19 district proper. 28 U.S.C. § 84(a); *see also* 28 U.S.C. § 1441(a). None of the Defendants have been
 20 “properly joined or served” within the meaning of 28 U.S.C. § 1446(b)(2)(A), but the following
 21 Defendants nonetheless consent to the filing of this Notice of Removal: The Charles Schwab
 22 Corporation; Charles R. Schwab; Walter W. Bettinger II; Peter Crawford; Joseph R. Martinetto; John
 23 K. Adams, Jr.; Christopher V. Dodds; Stephen A. Ellis; Mark A. Goldfarb; Frank C. Herringer; Arun
 24 Sarin; Paula A. Sneed; Charles A. Ruffel; and Joan T. Dea.

25 36. True and correct copies of all process, pleadings, and orders served upon Defendants
 26 and/or filed in the state court, including the (a) Summons, (b) Complaint, (c) Civil Case Cover Sheet,
 27 (d) Docket are attached as Exhibits A–D to the Mendro Declaration, filed concurrently herewith. These
 28 filings constitute the complete record of all records and proceedings in the state court.

37. Upon filing the Notice of Removal, Defendants will furnish written notice to Plaintiff's counsel, and will file and serve a copy of this Notice with the Clerk of the San Francisco County Superior Court, pursuant to 28 U.S.C. § 1446(d).

Dated: June 14, 2023

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